

AMENDED IN ASSEMBLY AUGUST 20, 2015

AMENDED IN ASSEMBLY JUNE 25, 2015

AMENDED IN ASSEMBLY JUNE 8, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 197

Introduced by Senator Block

February 10, 2015

An act to add Sections ~~22602 and 22603~~ 22602, 22603, and 22604 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as amended, Block. Finance lenders: commercial loan: referral.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders ~~and by the Commissioner of Business Oversight~~. Existing law makes a willful violation of the law by any person a crime. Existing law defines a finance lender as any person who is engaged in the business of making consumer loans or commercial loans. Existing law defines a commercial loan as a loan of a principal amount of \$5,000 or more, or any loan under an open-end credit program, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for purposes other than personal, family, or household.

This bill would authorize a licensed finance lender to compensate an unlicensed person ~~or company~~ in connection with the ~~referral~~ referral, as defined, of one or more prospective borrowers to the licensee for a commercial loan if certain requirements are met. These requirements would ~~include~~ include, among other things, that the referral leads to

the consummation of a commercial loan, the loan contract provides for an annual percentage rate that does not exceed a certain percentage, the licensed finance lender obtains documentation from the prospective borrower documenting the borrower's commercial status, as specified, and that the licensee maintains records of compensation paid to an unlicensed ~~person or company~~, person, as specified. *The bill would make a licensee liable for any misrepresentation made to a borrower in connection with a loan made to that borrower by that licensee. The bill would authorize the commissioner to adopt regulations imposing conditions on this referral activity, as specified.* The bill would also require a licensed finance lender who receives an application for a commercial loan from a prospective borrower who has been referred by an unlicensed ~~person or company~~ to provide a specified statement to the borrower regarding the referral arrangement. *The bill would prohibit any person receiving compensation in connection with a referral that leads to the consummation of a commercial loan from engaging in specified acts and would authorize the commissioner to order this person to desist and refrain from engaging in the business or further violating those provisions governing such referral.*

By creating new requirements, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22602 is added to the Financial Code, to
- 2 read:
- 3 22602. (a) A licensee that is a finance lender may pay
- 4 compensation to ~~an unlicensed person or company~~ a person that
- 5 is not licensed pursuant to this division in connection with the
- 6 referral of one or more prospective borrowers to the licensee, when
- 7 all of the following conditions are met:
- 8 (a)

1 (1) The referral by the unlicensed person ~~or company~~ leads to
2 the consummation of a commercial loan, as defined in Section
3 22502, between the licensee and the prospective borrower referred
4 by the unlicensed person ~~or company~~.

5 ~~(b)~~

6 (2) The loan contract provides for an annual percentage rate
7 that does not exceed 36 percent.

8 ~~(c)~~

9 (3) Before approving the loan, the licensee does both of the
10 following:

11 ~~(1)~~

12 (A) Obtains documentation from the prospective borrower
13 documenting the borrower's commercial status. Examples of
14 acceptable forms of documentation include, but are not limited to,
15 a seller's permit, business license, articles of incorporation, income
16 tax returns showing business income, or bank account statements
17 showing business income.

18 ~~(2)~~

19 (B) Performs underwriting and obtains documentation to ensure
20 that the prospective borrower will have sufficient monthly gross
21 revenue with which to repay the loan pursuant to the loan terms,
22 and does not make a loan if it determines through its underwriting
23 that the prospective borrower's total monthly expenses, including
24 debt service payments on the loan for which the prospective
25 borrower is being considered, will exceed the prospective
26 borrower's monthly gross revenue. Examples of acceptable forms
27 of documentation for verifying current and projected gross monthly
28 revenue and monthly expenses include, but are not limited to, tax
29 returns, bank statements, merchant financial statements, business
30 plans, business history, and industry-specific knowledge and
31 experience. If the prospective borrower is a sole proprietor or a
32 corporation and the loan will be secured by a personal guarantee
33 provided by the owner of the corporation, a credit report from at
34 least one consumer credit reporting agency that compiles and
35 maintains files on consumers on a nationwide basis ~~may~~ *shall* also
36 be considered.

37 ~~(d)~~

38 (4) The licensee maintains records of all compensation paid to
39 unlicensed persons ~~and companies~~ in connection with the referral
40 of borrowers for a period of at least four years.

1 ~~(e)~~

2 (5) The licensee annually submits information requested by the
3 commissioner regarding the payment of compensation in the report
4 required pursuant to Section 22159.

5 ***(b) A licensee shall be liable for any misrepresentation made***
6 ***to a borrower in connection with a loan made to that borrower by***
7 ***that licensee.***

8 ***(c) For purposes of this section, “referral” means either the***
9 ***introduction of the borrower and the finance lender or the delivery***
10 ***to the finance lender of the borrower’s contact information. The***
11 ***following activities by an unlicensed person are not authorized by***
12 ***this section, unless the unlicensed person is exempt from licensure***
13 ***under this division, is exempt from federal income taxes under***
14 ***Section 501(c)(3) of the Internal Revenue Code, is a business***
15 ***assistance organization recognized by the United States Small***
16 ***Business Administration, or the person engages in one or more of***
17 ***the following activities in connection with five or fewer commercial***
18 ***loans in a 12-month period made by persons licensed under this***
19 ***division:***

20 ***(1) Participating in any loan negotiation.***

21 ***(2) Counseling or advising the borrower about a loan.***

22 ***(3) Participating in the preparation of any loan documents,***
23 ***including credit applications.***

24 ***(4) Contacting the licensee on behalf of the borrower other than***
25 ***to refer the borrower.***

26 ***(5) Gathering loan documentation from the borrower or***
27 ***delivering the documentation to the licensee.***

28 ***(6) Communicating lending decisions or inquiries to the***
29 ***borrower.***

30 ***(7) Participating in establishing any sales literature or***
31 ***marketing materials.***

32 ***(8) Obtaining the borrower’s signature on documents.***

33 ***(d) The commissioner may adopt regulations under this section***
34 ***to impose conditions on the referral activity authorized under this***
35 ***section. The commissioner may classify persons, loans, loan terms,***
36 ***referral methods, and other matters within his or her jurisdiction,***
37 ***and may prescribe different requirements for different classes of***
38 ***loans.***

39 ***(e) Nothing in this section shall authorize the payment of a***
40 ***referral fee to an unlicensed person for a residential mortgage***

1 *loan, nor the payment of a referral fee to a person required to be*
2 *licensed under Section 10131 or 10131.1 of the Business and*
3 *Professions Code, unless such person is licensed by the Bureau*
4 *of Real Estate pursuant to Division 4 (commencing with Section*
5 *10000) of the Business and Professions Code.*

6 SEC. 2. Section 22603 is added to the Financial Code, to read:

7 22603. A licensee that is a finance lender shall provide a
8 prospective borrower who has been referred by an unlicensed
9 ~~person or company~~ the following written statement, in 10-point
10 font or larger, at the time the licensee receives an application for
11 a commercial loan, and shall ~~request~~ *require* the prospective
12 borrower to acknowledge receipt of the statement in writing:

13
14 “You have been referred to us by [Name of Unlicensed ~~Person~~
15 ~~or Company~~]. *Person*]. If you are approved for the loan, we may
16 pay a fee to [Name of Unlicensed ~~Person or Company~~] *Person*]
17 for the successful referral. *[Licensee], and not [Name of Unlicensed*
18 *Person] is the sole party authorized to offer a loan to you. You*
19 *should ensure that you understand any loan offer we may extend*
20 *to you before agreeing to the loan terms.* If you wish to report a
21 complaint about this loan transaction, you may contact the
22 Department of Business ~~Oversight, Division of Corporations~~
23 ~~Oversight~~ at 1-866-ASK-CORP (1-866-275-2677), or file your
24 complaint online at www.dbo.ca.gov.”

25
26 SEC. 3. Section 22604 is added to the Financial Code, to read:

27 22604. (a) Any person that receives compensation in
28 connection with a referral, as described in Section 22602, that
29 leads to the consummation of a commercial loan under this division
30 may not do any of the following:

31 (1) *Make a materially false or misleading statement or*
32 *representation to a prospective borrower about the terms or*
33 *conditions of a prospective loan.*

34 (2) *Advertise, print, display, publish, distribute, or broadcast*
35 *any statement or representation with regard to the conditions for*
36 *making or negotiating a loan that is false, misleading, or deceptive,*
37 *or that omits material information that is necessary to make the*
38 *statements made not false, misleading, or deceptive.*

39 (3) *Engage in any act in violation of Section 17200 of the*
40 *Business and Professions Code.*

1 (4) *Commit an act that constitutes fraud or dishonest dealings.*

2 (5) *Fail to safeguard a prospective borrower's personally*
3 *identifiable information.*

4 (b) *For purposes of this section, "personally identifiable*
5 *information" means information that is not publicly available,*
6 *that a prospective borrower provides for the purpose of obtaining*
7 *a loan or other financial product. Personally identifiable*
8 *information includes information a prospective borrower provides*
9 *on an application to obtain a loan, credit card, or other financial*
10 *product or service.*

11 (c) *Whenever, in the opinion of the commissioner, any person*
12 *is engaged in the business of soliciting borrowers for a loan to be*
13 *made by a licensee under this division, and the person is not in*
14 *compliance with this section, Section 22602, Section 22603, or*
15 *any other provision of this division authorizing such activity or*
16 *exempting the person from this division, the commissioner may*
17 *order the person to desist and to refrain from engaging in the*
18 *business or further violating this division.*

19 ~~SEC. 3.~~

20 SEC. 4. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.